

Before the
Federal Communications Commission
Washington, DC

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| In the Matter of: |) | |
| Closed Captioning of Video |) | |
| Programming |) | |
| Telecommunications for the |) | CG Docket No. 05-231 |
| Deaf, Inc. Petition for |) | |
| Rulemaking |) | |

Reply Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
California Coalition of Agencies Serving the
Deaf and Hard of Hearing (CCASDHH)
American Association of the Deaf-Blind (AADB)
Technology Access Program at Gallaudet University (TAP)

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Blake E. Reid
Counsel to TDI
blake.reid@colorado.edu
303.492.0548

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the American Association of the Deaf-Blind (AADB), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP), respectfully reply to comments on the *Second Further Notice of Proposed Rulemaking* (“*Second FNPRM*”) in the above-referenced docket, which raise issues around the requirement and appropriate use of video programmer contact information and certifications and the appropriate role of video programming distributors (“VPDs”) with respect to certifications.¹

I. The Commission must require VPDs to remain the primary point of consumer contact through the resolution of all complaints.

Throughout this proceeding, we have reiterated our concerns about the prospect of a shift from the Commission’s long-standing VPD-centric model for closed captioning responsibility to a model that splits responsibilities between VPDs and video programmers.² In particular, we are concerned that a responsibility shift will complicate the resolution of complaints and lead to consumer confusion.³ We have urged the Commission to ensure, at a bare minimum, that VPDs—with whom consumers have a

¹ *Closed Captioning of Video Programming*, Second Further Notice of Proposed Rulemaking, CG Docket No. 05-231, (Dec. 15, 2014) (“*Second FNPRM*”), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-206A1.pdf.

² *E.g.*, *Comments of TDI, et al.*, at 1-2 (Jan. 20, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001014790>.

³ *E.g.*, *Ex Parte of TDI, et al.*, at 1-2 (Aug. 4, 2014), <http://apps.fcc.gov/ecfs/document/view?id=7521750124>.

direct relationship—remain the primary point of contact for captioning complaints from their receipt to their resolution.⁴

Unfortunately, some commenters now invite the Commission to use the prospect of a responsibility shift to absolve VPDs of their basic obligations to help their own customers resolve complaints with their service. Verizon urges the Commission to require programmers to submit contact information for the Commission specifically “for the purpose of receiving complaints from . . . the public,” while DIRECTV contemplates that consumers would “seek redress” directly from video programmers.⁵

As Comcast alludes, any shift must lead to a model of *shared* responsibility where VPDs retain responsibility for communicating with and resolving consumer complaints, even where a captioning problem is the legal responsibility of the programmer.⁶ As the National Association of Broadcasters (NAB) notes, “[v]iewers expect to contact their TV provider, whether an over-the-air broadcast station or a multichannel video programming distributor (MVPD), should a problem arise with captioning.”⁷

We agree with NAB that “[i]t is not rational or efficient to encourage consumers to contact a [video programmer] first” in the case of a problem.⁸ As NAB notes, both VPDs and video programmers may be responsible for captioning problems, and any responsibility shift cannot be a one-way street.⁹ We urge the Commission to reject any

⁴ *Id.* at 2.

⁵ *Comments of Verizon*, at 2-3 (Jan. 20, 2015) (“*Verizon Comments*”), <http://apps.fcc.gov/ecfs/document/view?id=60001014738> *Comments of DIRECTV, LLC*, at 2 (Jan. 20, 2015) (“*DIRECTV Comments*”), <http://apps.fcc.gov/ecfs/document/view?id=60001014741>.

⁶ *See Comments of Comcast*, at 2 (Jan. 20, 2015) (“*Comcast Comments*”), <http://apps.fcc.gov/ecfs/document/view?id=60001014760>.

⁷ *Comments of NAB*, at 3 (Jan. 20, 2015), (“*NAB Comments*”), <http://apps.fcc.gov/ecfs/document/view?id=60001014778>.

⁸ *Id.*

⁹ *Id.* at 9.

responsibility shift that absolves VPDs of their responsibility to maintain the point of contact with their customers.

II. Requiring video programmers to provide contact information to the Commission would nevertheless serve the public interest.

While the provision of contact information for video programmers should never be used as a basis for requiring consumers to complain to programmers rather than VPDs, we nevertheless agree with the American Cable Association (ACA) that video programmers should be required to provide contact information to the Commission. As the ACA notes, the ready availability of contact information for programmers will assist VPDs in resolve captioning complaints from their customers, particularly smaller VPDs who may not otherwise be in direct contact with video a programmer.¹⁰ We also agree that the information will assist Commission staff in resolving complaints and initiating enforcement action in the event of violations of the rules.¹¹ Finally, we agree that the benefits of requiring the provision of contact information would outweigh the minimal burdens on video programmers.¹²

We share NAB's and QVC's concerns that providing contact information for the purpose of direct consumer contact and complaint resolution would frustrate consumers and complicate the complaint process for all involved.¹³ However, we are confident that consumer confusion can be mitigated by clear guidance from the Commission that video programmer contact information is intended primarily for use by VPDs and Commission

¹⁰ *Comments of the American Cable Association (ACA)* at 3-6 (Jan. 20, 2015) (“*ACA Comments*”), <http://apps.fcc.gov/ecfs/document/view?id=60001014806>.

¹¹ *See id.* at 4.

¹² *See id.* at 5-6.

¹³ *See NAB Comments* at 3-4; *Comments of QVC, Inc.* at 1-2 (Jan. 20, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001014648>.

staff for complaint resolution and enforcement purposes and by the public for the purpose of ensuring transparency in cases of non-compliance.

Finally, we acknowledge NAB's concern over requiring broadcasters who have already submitted their contact information to the Commission's VPD registry to do so again due to their status as video programmers.¹⁴ We presume, however, that the Commission can calibrate any contact information submission system to repurpose or link to contact information in the VPD registry for dual-status entities like broadcasters.

III. Requiring video programmers to provide certifications to the Commission would serve the public interest.

We agree with other commenters that if the Commission shifts responsibility to video programmers for aspects of captioning provision and compliance, the Commission should require programmers to certify compliance with those aspects to the Commission.¹⁵

While some commenters invite the Commission to abandon certification requirements altogether, we agree with ACA that requiring certifications would aid the Commission in monitoring and rapidly resolving captioning problems.¹⁶ In particular, a failure to certify compliance would provide probative evidence early in the resolution of a complaint that the root of the captioning problem may lie with the programmer, and would likewise force programmers to be proactive in ensuring their compliance with the rules rather than allowing problems to fester until consumer complaints arise after the fact.

¹⁴ *NAB Comments* at 2-3.

¹⁵ *See Comments of Aberdeen Captioning* at 1 (Jan. 8, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001012364>.

¹⁶ *See ACA Comments* at 6-7; *but see Comments of the National Cable & Telecommunications Association (NCTA)* at 2 (Jan. 20, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001014732>; *DIRECTV Comments* at 3; *Operator Comments* at 3-4; *Verizon Comments* at 4-5; *Comcast Comments* at 3; *NAB Comments* at 5-6.

Moreover, these complaint resolution and enforcement benefits would outweigh any modest burdens that might be imposed. NAB, for example, notes that many programmers already make captioning certificates widely available as part of the Commission's best practices, and identifies no reason that programmers would be overly burdened by having to provide those same certifications to the Commission.¹⁷

Finally, we urge the Commission to reject the cursory argument of the National Cable & Telecommunications Association (NCTA) that the Commission should not impose certification requirements on programmers simply because it is not explicitly required to do so under the Twenty-First Century Communications and Video Accessibility Act ("CVAA").¹⁸ Even accepting NCTA's interpretation of the CVAA as true for the sake of argument, the interpretation is irrelevant because the Commission's television captioning rules are promulgated under the provisions of the Telecommunications Act of 1996, which affords the Commission wide latitude to ensure that video programming is "widely accessible."¹⁹

IV. The Commission should require VPDs to retain accountability for ensuring that programmers are in compliance with the caption provision and quality rules.

To balance a certification requirement, we urge the Commission to decline the invitation of commenters to absolve VPDs of any responsibility to ensure that the programming they distribute contains high-quality captions. For example, Verizon suggests that VPDs should not be responsible for ensuring that the video programmers from whom they purchase programming contract certify that the programming includes compliant captions, while several commenters (collectively, the "Operators") suggest that

¹⁷ *NAB Comments* at 5-6.

¹⁸ *See NCTA Comments* at 3.

¹⁹ *See* 47 U.S.C. § 613(b)(1), (c)(1).

they should not have to “police” problems with programming sourced from those programmers.²⁰

This line of reasoning is akin to a claim from a grocery store that it should bear no responsibility for selling rotten food simply because it was contaminated before it arrived at the store. VPDs are not merely passive conduits for programming; they make active decisions about which programming to distribute to their customers and should retain responsibility for ensuring the programming is available to all their customers, including customers who are deaf or hard of hearing, on equal terms.

We again urge the Commission to make clear that even if the Commission implements a responsibility shift, VPDs may be held accountable for willful ignorance of or failure to disclose caption provision or quality problems. In particular, the Commission should require VPDs to verify that video programmers who supply them with programming have filed valid certifications and notify the Commission where they have not. This requirement would be consistent with the current practice of VPDs, which, as the Operators and Verizon note, is to ensure that programmers certify the programming they distribute.²¹

Respectfully submitted,

/s/

Blake E. Reid
Counsel to TDI

blake.reid@colorado.edu
303.492.0548

²⁰ *Verizon Comments* at 5; *Comments of Charter Communications, Inc., et al.* at 2, 6 (Jan. 20, 2015) (“*Operator Comments*”), <http://apps.fcc.gov/ecfs/document/view?id=60001014752>; *see also ACA Comments* at 9, n.22.

²¹ *See Operator Comments* at 5-6; *Verizon Comments* at 4.

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Claude Stout, Executive Director • cstout@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Andrew Phillips, Policy Counsel • andrew.phillips@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Hearing Loss Association of America (HLAA)

Anna Gilmore Hall, Executive Director • AGilmoreHall@Hearingloss.org
Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
301.657.2248
www.hearingloss.org

Association of Late-Deafened Adults (ALDA)

Steve Larew, President • president@alda.org
8038 Macintosh Lane, Suite 2, Rockford, IL 61107
www.alda.org

Cerebral Palsy and Deaf Organization (CPADO)

Mark Hill, President • president@cpado.org
2025 SE Pine Street, Apt. #302, Portland, OR 97216
503.468.1219
www.cpado.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Cheryl Heppner, Vice Chair • CHheppner@nvrc.org
3951 Pender Drive, Suite 130, Fairfax, VA 22030

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

Sheri A. Farinha, Chair • SFarinha@norcalcenter.org
4708 Roseville Rd, Ste. 111, North Highlands, CA 95670
916.349.7500

American Association of the Deaf-Blind (AADB)

Mark Gasaway, President • mark.gasaway@comcast.net
PO Box 8064, Silver Spring, MD 20907

Technology Access Program at Gallaudet University (TAP)

Contact: Christian Vogler, Ph.D., Director • christian.vogler@gallaudet.edu

Department of Communications Studies

SLCC 1116, Gallaudet University

800 Florida Avenue NE, Washington, DC 20002

202.250.2795

tap.gallaudet.edu

Cc:

Maria Kirby, Office of Chairman Wheeler

Adonis Hoffman, Office of Commissioner Clyburn

Valery Galasso and Travis Litman, Office of Commissioner Rosenworcel

Matthew Berry, Office of Commissioner Pai

Erin McGrath, Office of Commissioner O’Rielly

Kris Monteith, Consumer and Governmental Affairs Bureau

Karen Peltz Strauss, Consumer and Governmental Affairs Bureau

Greg Hlibok, Consumer and Governmental Affairs Bureau

Eliot Greenwald, Consumer and Governmental Affairs Bureau

Caitlin Vogus, Consumer and Governmental Affairs Bureau

Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau

Michelle Carey, Media Bureau

Mary Beth Murphy, Media Bureau

Steven Broeckaert, Media Bureau

Diana Sokolow, Media Bureau